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"Of those men who have overturned the Liberties of Republics, the greatest number "have begun their career by paying an obsequious court to the People—com- "mencing DEMAGOGUES, and ending TYRANTS." HAMILTON.

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TRIAL OF COL. BURR.

(*Continued from page* 283.)

(As Mr. Bott's speech contains an explanation of much of the course which is probably to be pursued by Col. Burr's counsel, particularly in regard to instructions from the court to the grand jury on the evidence, we have published it at some length.)

Mr. Botts. In my objections to General Wilkinson's affidavit, I may be compelled to question the correctness of principles in favour of which the court has expressed an impression. It has been our misfortune to have been drawn out into a desultory discussion of some of the propositions fixing limits to the examination; when these propositions had such relation to each other and among themselves as to render it difficult to fortify one effectually against assault, without the support of the others. And although the subject was not wanting in novelty or importance to fit it for solemn argument, yet the complaints of the prosecutor so often, so loudly, and so causelessly repeated, has forced from the court a premature intimation of judgment. I feel the perplexity of my situation most sensibly, and shall hope for the indulgence of the court, if I should unwarily stray into the seeming indecorum of resisting, now and then, an inclination of the mind of the bench. Whenever I venture into a scene so delicate, I shall present to the court authorities not to be resisted.

The opinion of the supreme court overruling the objection, that the oath administered to Gen. Wilkinson was extrajudicial, fixes the law for this court.

The best evidence that the nature of the case will admit of, should be produced. This rule applies to every stage of every case in every court. The failure to produce the best evidence that the nature of the case admits of, furnishes a presumption, that the higher evidence left behind would, if produced, make against the party offering the weaker. All this is familiar in civil cases, where 40s. may be the quantum of interest in litigation. The benefit of this common law and common sense ought not to be lost, when the liberty of a citizen is concerned—when a six months dungeon may be the object of the motion.

The supreme court considered the affidavit as the best evidence the case then admitted of. The accusation was fresh, and neither time nor means had been allowed for procuring a personal attendance. Now the accusation is old, and the government has had all the necessary means of bringing the witness here. The circumstances do therefore now admit of higher evidence than the exparte affidavit.

The *viva voce* testimony of Gen. Wilkinson is the right of my client. No man should be deprived of the benefit of a cross-examination, without necessity. You have in another place said, sir, that it was to be made out only by inference from Gen. Wilkinson's affidavit, that Col. Burr was the writer of the letter in cypher. If the witness was here, he would impugn that inference by swearing that it was not in Col. Burr's hand writing. If Gen. Wilkinson was present, would you admit his affidavit? If he ought to have been present, and the government would not get him, shall the prosecution be favoured for its negligence?

But the present charge is confined to high treason in levying war against the United States; and the great question is, whether Wilkinson's evidence is in any form pertinent to the charge? I do not mean to urge the objection, that if it developes any criminal purpose, it is not a treasonable purpose, for this construction has been settled by the supreme court. Admitting for the time, that it contained evidence of a treasonable purpose, and that the supreme court is to be overruled, still the evidence would be most impertinent upon the present charge of actual treason.

I have alluded to legal propositions, in-

tended to be pressed, as forming legal restrictions upon the task in which we are engaged. I will first combine them, that their fitness to each other, and their collective effects, may be seen. My second process will be to disunite them, and by an analytical comparison of them with the known principles of our treason laws, to ascertain their legality.

No evidence of any matter ought to be given *until* proof shall be adduced that there was an actual war levied in the district of Virginia; and until it is proved that an overt act of treason, in that war, was done by Col. Burr:—which proofs shall be by two witnesses at least.

First. It must be proved that there was an actual war. A war consists *wholly* in acts, and not in intentions. The acts must be in themselves acts of war; and if they be not so intrinsically, words or intentions cannot make them so. In England, when conspiring the death of the king was treason, the *quo animo* formed the essence of the offence; but in America, the national convention has confined treason to the *act*. We cannot have a constructive war, within the meaning of the constitution. An intention to levy war, is no evidence that a war was levied. Intentions are always mutable and variable. The continuance of guilty intentions is not to be presumed. If this were not the case, the avowal of a purpose to levy war, would fix the crime. For a proved intention might be attached to the next innocent act of the person who formed it; and so preparations of emigration be turned into a levying of war.

It has been eloquently declared that war cannot exist in a closet or a corner; but when levied, it must be in the face of the world. This cannot be true, if the recesses of the bosom are to be explored for any of the ingredients in the composition of the crime of levying war. The guilty intention must be made manifest from the act alone.

General Wilkinson confesses to know nothing but of intentions, which are not evidence of facts.

2dly. The war must not only have been levied, but Col. Burr must be proved to have committed an overt act of treason in that war. A treasonable *intention* to cooperate, is no evidence of an actual cooperation. The acts of others, even if in pursuance of his plan, would be no evidence against him. It might not be necessary that he should be present, perhaps; but he must be, at the time of levying the war, co-operating by acts; or, in the language of the constitution, be committing overt acts. The acts of associates in a treasonable plan, in countries where the doctrine of constructive war prevails, can never be given in evidence against the accused until after the plan has been proved on the latter, and until such acts shall appear to have been within the limits of that plan. 1 East's Power Law, 96, 97. Part of the proof in this affidavit is of the declarations of a supposed associate as to what the plan itself was. But in this coountry, as there cannot be a constructive treasonable war, plans and acts of associates can only come in, when the former has been executed, and the latter has been visibly and publicly executed. Vol. 4, Tucker's Black. Appendix B.

3dly. The overt act by the accused, in an actual war, must not only be proved, but it must be proved to have been committed *within the district*. The 4th article of the constitution of the U. S. and the 8th article of the amendmens to the constitution, require that the trial shall be by a jury of the district where the offence was committed. The oath of the grand jury is accordingly to inquire of offences within the district. The jurisdiction of this court is also limited by express law to offences within the district, and it is obviously true that the court's jurisdiction cannot be broader in an incipient inquiry, than it would be in its connexion with a jury on a final trial. Doct. Blackstone, in the 4th volume of his Com. 303, refers the oath of the grand jury "to inquire into offences committed within the body of the county," and denies the right of the grand jury to inquire into facts out of the county. In preparing a work for the grand jury, the court cannot disregard the limits of their power.

The crime, to be committed in the district, must be *wholly* committed there. At the common law, if the stroke was given in one county, and the person stricken died in another, the murderer could not be prosecuted in either.—To remedy this defect, and to provide for others similar to it, many provisions have been made by the English parliament. 4 Black. 303, 4, 5. But the English parliament never did alter the common law, as it respected the crime of levying an actual treasonable war. Kelyng, 15. The constitution and act of Congress have both adopted the rule of location. V. Tucker's Blackstone, 4 Vol. Appendix B. 49, 50, 51. Granting, then, that intention may make that war which would not otherwise be so, still as a formed intention is no proof of its own continuance or execution, the intention must be proved cotemporaneous and homogenious with the act in the district. In this view the intention forms a constituent part of the offence. If one constituent part of

the offence can be brought from without the district, and coupled with others in the district, any one constituent part, or number of constituent parts of the crime may be brought from without the district. Then if one component part only happens in Virginia, out of 100 necessary to its completion, would give this court jurisdiction—and thence one out of 100 parts of a crime, would be a crime within the meaning of the constitution. Let us view the consequences of this logic.

Upon proof against Col. Burr, touching a crime, part of which was committed in this district, he may be tried and acquitted. In Ohio he may be indicted, and evidence may be prepared touching the same crime. Can he plead *autrefois acquit* in bar, by avowing that the crimes charged in the two states were one and the same? His averment would be against the record of the indictment charging a complete separate crime in each district. Will you, sir, put upon the constitution such a construction as will subject a citizen to be hunted down, by trial after trial, in state after state, as long as the persecuting spirit of a wicked executive may last? Do not understand me to allude, in this, to the present administration, the characters of which I have been in the habit of admiring; but the construction now to be fixed, must go down to posterity, and may be made instrumental in effecting the worst of state oppressions.

Remember that Col. Burr has forborn to avail himself of the legal principle in Kentucky and in the Missisippi territory, in order that the merits of his case might come before the inquests; but it ought now to be agreed that he should protect himself from being harassed further by calling into exercise the great principles of the constitution, declaring that no man shall be twice put in jeopardy of his life for the same offence. V. amendments to const.

Now what part of the affidavit speaks of a fact within the district?

4thly. The overt act of treason by Col. Burr within the district, must be proved by two witnesses.

The constitution and act of Congress require two witnesses, not only to the act, but to the treasonable quality of the act. After full time has been afforded to collect all the witnesses in the power of the government, the accused ought not to be deprived of his liberty, unless it was believed that the evidence collected would convict him. Imprisonment is only intended for trial, and not for punishment. What does Gen. Wilkinson's affidavit make out intentions by? The answer is, by the confessions of the accused, or of his supposed associates. The confessions of the accused, by the express words of the constitution, are not evidence, unless made in open court. Confessions are often admitted, from necessity, to get at crimes that deal in secrecy, as larceny, forgery, and robbery: but the safety of the people requires that crimes which deal in *publicity*, as does the crime of a treasonable war, should not be proved by evidence so incapable of exculpatory proof. When an honourable gentleman (Mr. Giles) was challenged the other day, upon a suggestion of his having expressed himself upon the case of the accused, he said he was indisposed to hear evidence of unguarded expressions in which the witness might have mistaken his meaning—have misunderstood what he said, or not have heard all that he said—or have substituted his own inferences for the words of the speaker. Blackstone and Foster have characterized it to be the most dangerous species of evidence, ever liable to misconstruction and abuse. But if the constitution has proscribed it, why now question its exclusion? If the confessions of the accused, out of court, could not be evidence against him, could the confessions of real accomplices be evidences against him? Yet the evidence of Wilkinson relates, in part, to the confession of pretended accomplices no way proved to have been authorized by Col. Burr to say or do any thing.

But why, it may be asked, is Col. Burr afraid to hear illegal evidence, if he is consciously innocent?

We see witnesses from different and distant parts of the United States, whose names, faces, and characters, are alike unknown to Col. Burr. He cannot ascertain upon what parts of his life or conduct they are expected to speak, or upon what information their evidence may rest. His character has long been on public torture; and wherever that happens, with either a good or a bad man, the impulses to false testimony are numerous. Sometimes men emerge from the sinks of vice and obscurity into patronage and distinction, by circulating interesting tales, as all those of the marvellous kind are—others, from expectations of office and reward, volunteer; while timidity, in a third class, seeks to guard against the apprehended danger, by magnifying trifling stories of alarm. These works of exaggerating and propagation are frequently the subjects of idle amusement. The authors, until they commit themselves, have no just conception of the mischiefs they are hatching: but when they are afterwards called to give testimony, perjury will not appal them, if it be necessary to save their reputations for consistency or veracity. If the evidence be

restricted within the legal limits, the purest of characters, under accusation of treason, will have hazard enough to run. A judge, whose experience of these dangers was great, thus speaks on the subject:—"The rule of rejecting all manner "of evidence in criminal prosecutions, "that is foreign to the point in issue, is "founded on sound sense and common "justice. For no man is bound, at the "peril of life or liberty, fortune or repu-"tation, to answer at once, and unprepar-"ed, for every action of his life." Few, *even of the best of men, would choose to be put to it.* And had not those concerned in the state prosecutions, out of their zeal for the public service, sometimes stepped over this rule, in the case of treason, it would, perhaps, have been needless to have made an *express* provision against it in that case. Foster's C. L. 246.

Wednesday, May 27th.

Mr. Wickham regretted that so much time had been consumed, hoped the court would acquit them of any intention to waste it—would pay so much respect to the court as not to bring forward motions which he believed to be illegal, but the rules of evidence ought to be rigidly adhered to.

Mr. W. was not afraid of the affidavit, Mr. W. which contained nothing more than what was scattered in every Newspaper throughout the United States. He objected to it on the ground of principle. He wished two points to be settled; are affidavits to be read at all on such a motion? and at such a crisis as this? And if so, ought they to be read, if the witnesses themselves were present? Would it be right, if they were in the next street or next county?—Or was there time enough to produce the viva voce testimony itself? Mr. Burr had a right to be confronted with Gen. Wilkinson, and to cross question and examine him. The government ought to bring him.

Mr. W. inquired if any subpœna for Gen. Wilkinson had been issued, and was informed by the clerk that a blank subpœna had been taken out.

Mr. W. declared that there had time enough passed, and wished to see Gen. Wilkinson brought forward, or some satisfactory excuse rendered.

Another ground is, that according to the decision of the supreme court, this affidavit does not bear upon the present motion. Mr. Swartwout, accused of being connected with Col. Burr, was discharged, because the affidavit did not apply to the charge of treason. A third objection is, that Gen. Wilkinson relates no act committed in the district of Virginia—nor any where else. The attorney for the U. S. says that he will prove the overt act hereafter. But the rules of evidence apply not only to the admissibility of evidence, but to the order in which it is produced. Let them first prove the overt act, if they can, and then they are at full liberty to prove the colouring of it.

This evidence is not the best which could be produced. Gen. Wilkinson speaks of a cyphered letter. Where is this letter and its key?

Mr. Hay would not be led from his course by long and animated speeches, but would inform the gentlemen of the astonishment and regret, and the denunciations of Col. Burr, when he first heard of the publication of this cyphered letter. Their triumph was premature, as they did not know what could be proved.

Mr. E. Randolph did not know what gentlemen meant to prove, but objected to the production of Gen. Wilkinson's affidavit, from what had appeared. It was inapplicable to the question, and contrary to the bill of rights, and the constitution of the U. States. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; *to be confronted with the witnesses against him*, &c. Col. Burr has this right. Gentlemen have shown an obsolete affidavit, for which there is no necessity and no law.

The chief justice stated, that the supreme court of the U. S. had already decided that affidavits might under certain circumstances be admitted, but Gen. Wilkinson's affidavit did not contain any proof of an overt act; that he was extremely willing to permit the attorney for the U. S. to pursue his own course in the order of drawing out the evidence, confident that he would not waste the time of the court by producing extraneous matter. But where was the necessity of producing Gen. W.'s affidavit first? If there was no other evidence to prove the overt, W.'s affidavit, as had been decided by the supreme court of the U. S. goes for nothing, by which decision he should have conceived himself bound, even if he had differed from it. Why then produce this affidavit?

Mr. Hay observed that he should have pursued a different course, and believed if he had been left to himself, he should have satisfied the court that his own course was best. Wilkinson's affidavit might even now be confronted by witnesses, as Mess'rs Bollman and Swart-

wout were present, and would say whether such conversations were ever held, as were detailed in this affidavit. The same strictness of examination is not necessary now as in a trial in chief. He believed the opposite counsel intended by dint of long speeches to attempt to drive them from their course. That they were the last persons he should consult. That he believed the evidence he would produce would convince the court of the existence of a traiterous design and an overt act, and he asked if no part of this deposition was admissible.

The chief justice observed that he thought no part of it admissible at this time. That W.'s affidavit either contained proof of the treasonable design, which was no proof of the overt act, or related to conversations, which, however strongly they might bear upon those that held them, had no bearing on Col. Burr*.

Mr. Hay asked how the court was to know the contents of a paper before it was read to them. An affidavit might contain both the proof of an overt act and of a traiterous design.

Mr Wickham. These gentlemen talk of delay, yet they would introduce evidence irrelevant to the question. They will not pursue our advice, nor do we ask them. We wish them to pursue the principles of law and evidence. One of the best rules of evidence is the order of evidence. If a man is charged with a crime, the deed must be proved to exist before any testimony is intoduced as to the intention with which it is done. He called upon the court to enforce the strict order of evidence.

Mr. Burr observed, that in point of fact it was immaterial to him whether this affidavit was read or not. He wished the great principles of evidence might be laid down, which were equally applicable to this and to all othes affidavits. He consented that the court might have this deposition read, if they thought proper.

Mr. Hay stated that it was one of Burr's objects to seize on Mexico. If it could be proved that this object was connected with an attack on the U. S. this deposition would be of material consequence in that point of view. If both can be proved, it is not of material consequence with which we begin. If a conspiracy be planned of a misdemeanour and treason so blended, that the accomplishment of the one facilitates the accomplishment of the other, it is of material consequence to prove the misdemeanour. He believed that Mr. Taylor and Mr. Allbright would prove an armed assemblage of men on Blannerhasset island.

The chief justice observed, that if there was no fact, or no overt act of treason, before the court, the court could have nothing to say to the present motion. If no fact could be proved, they could not hear the prosecution. That he should be extremely sorry to waste time on a variety of irrelevant subjects, when there was no actual testimony to prove the overt act, and thus give the court a jurisdiction over the case.

Mr. Hay expressed his regret, but acquiesced in the decision, if he understood the court.

The chief justice repeated in substance what he had before last observed. Gen. Wilkinson's affidavit was put aside.

Mr. Hay called Peter Taylor and —— Allbright—the first was Blannerhasset's gardener, the other had worked on the island. Of their testimony it is improper at present to make any statement. They were succeeded by a letter, partly in cypher and partly in German, addressed to a person in New-Orleans, which Mr. John Brown (former secretay to Gen. Marshal, on his embassy to Paris) and Mr. Hubner, a respectable German merchant, of Richmond, were sworn to translate according to the best of their abilities.

Mr. Hay then brought forward the affidavit of one Dubas, a sergeant in the army of the U. S. This affidavit was represented by the prosecution to be of the greatest importance, but was objected to by Mr. B.'s counsel, on the ground of informality. The affidavit appeared on its face to be taken by one Cenas, who signed himself a magistrate of the town of Orleans. This signature was succeeded by Gov. Clairborne's certification of the fact, on one day after the date of the certificate. But there was no caption to it, as, "New-Orleans," *Scil.* nor any mention made at the foot of it of the place where it was taken.

A long argument ensued upon its admissibility, and the court adjourned without giving an opinion.

Thursday, May 28th.

The proceedings of yesterday were read, and the grand jury called, and adjourned till to-morrow at 10 o'clock.

William Duane appeared as a witness for the U. S.

Luther Martin, Esq. appeared as a counsellor for Mr. Burr.

The court then proceeded to the consi-

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* *The C. J. observed in a subsequent stage, that an idea had since struck his mind; that he had not recollected that these conversations were said to be held by Col. Burr, and that of course their conversations would bear upon him.*

deration of the point made respecting Dubas's affidavit.

Some desultory conversation ensued between the counsel and the bar, on the proceedings before the supreme court of the U. S. and on a case quoted from Washington's reports.

It appeared that a similar objection had not been taken, but that it passed sub silentia.

The chief justice delivered the opinion of the court as follows:

On the part of the United States, a paper purporting to be an affidauit, has been offered in evidence, to the reading of which two exceptions are taken:

1st. That an affidavit ought not to be admitted, where the personal attendance of the witness could have been obtained;

2dly. That this paper is not so authenticated as to entitle itself to be considered as an affidavit.

That a magistrate may commit on affidavits, has been decided in the supreme court of the United States, though not without hesitation. The presence of the witness to be examined by the committing justice, confronted with the accused, is certainly to be desired, and ought to be obtained, unless considerable inconvenience and difficulty exists in procuring his attendance. An ex-parte affidavit, shaped, perhaps, by the person pressing the prosecution, will always be viewed with some suspicion, and acted upon with some caution, but the court thought it would be going too far to reject it altogether. If it was obvious that the attendance of the witness was easily attainable, but that he was intentionally kept out of the way, the question might be otherwise decided.

But the particular case before the court does not appear to be of this description. The witness resides at a great distance; and there is no evidence that the materiality of his testimony was known to the prosecutors, or to the executive, in time to have directed his attendance. It is true that general instructions, which would apply to any individual, might have been sent, and the attendance of this or any other material witness obtained under those instructions; but it would be requiring too much to say, that the omission to do this ought to exclude an affidavit. This exception, therefore, will not prevail.

The 2d is, that the paper is not so authenticated, as to be introduced as testimony on a question which concerns the liberty of a citizen.

This objection is founded on two omissions in the certificates.

The first is, that the place at which the affidavit was taken, does not appear.

The second, that the certificate of the governor does not state the person who administered the oath to be a magistrate, but goes no further than to say, that a person of that name was a magistrate.

That, for aught appearing to the court, this oath may or may not in point of fact have been legally administered, must be conceded.

The place where the oath was administered, not having been stated; it may have been administered where the magistrate had no jurisdiction, and yet the certificate be perfectly true. Of consequence there is no evidence before the court that the magistrate had power to administer the oath, and was acting in his judicial capacity.

The effect of testimony may often be doubtful; and courts must exercise their best judgment in the case, but of the verity of the paper there ought never to be a doubt. No paper or writing ought to gain admittance into a court of justice as testimony, unless it possesses those solemnities which the law requires. Its authentication must not rest upon probability, but must be as complete as the nature of the case admits of. This is believed to be a clear legal principle. In conformity with it, is, as the court conceives, the practice of England and this country, as is attested by the books of forms; and no case is recollected, in which a contrary principle has been recognized. This principle is illustrated by the doctrine with respect to all courts of a limited jurisdiction. Their proceedings are erroneous, if their jurisdiction be not conclusively shown. They derive no validity from the strongest probability that they had jurisdiction in the case; none certainly from the presumption that being a court, an usurpation of jurisdiction will not be presumed. The reasoning applies in full force to the actings of a magistrate whose jurisdiction is local. Thus in the case of a warrant, it is expressly declared that the place where it was made ought to appear.

The attempt to remedy this defect, by comparing the date of the certificate given by the magistrate, with that given by the governor, cannot succeed. The answer given at the bar to this argument, is conclusive. The certificate wants those circumstances which would make it testimony, and without them no part of it can be regarded.

The second objection is equally fatal. The governor has certified that a man of the same name with the person who has administered the oath, is a magistrate, but not that the person who has administered it is a magistrate.

It is too obvious to be controverted, that there may be two or more persons of the same name, and consequently to produce that certainty which the case readily admits of, the certificate of the governor ought to have applied to the individual who administered the oath. The propriety of this certainty and precision in a certificate, which is to authenticate any affidavit to be introduced into a court of justice, is so generally admitted, that I do not recollect a single instance in which the principle has been departed from.

It has been said that it ought to appear that there are two persons of the same name, or the court will not presume such to be the fact. The court presumes nothing. It may or may not be the fact, and the court cannot presume that it is not. The argument proceeds upon the idea that an instrument is to be disproved by him who objects to it, not that it is to be proved by him who offers it. Nothing can be more repugnant to the established usage of courts.

How is it to be proved that there are two persons of the name of Cenas in the territory of Orleans? If, with a knowledge of several weeks, perhaps months, that this prosecution was to be carried on, the executive ought not to be required, with the notice of a few hours, to prove that two persons of the same name reside in New-Orleans.

It has been repeatedly urged that a difference exists between the strictness of laws which would be applicable to a motion to commit for trial.

Of the reality of this distinction, the present controversy affords conclusive proof. At a trial in chief, the accused possesses the valuable privilege of being confronted with his accuser. But there must be some limit to this relaxation, and it appears not to have extended so far as to the admission of a paper, not purporting to be an affidavit, and not shown to be one.

When it is asked whether every man does not believe that this affidavit was really taken before a magistrate, it is at once answered that this cannot affect the case. Should a man of probity declare a certain fact within his own knowledge, he would be credited by all who knew him, but his declaration would not be received as testimony by the judge who firmly believed him. So a man might be believed to be guilty of a crime, but a jury could not convict him, unless the testimony proved him to be guilty of it. This judicial disbelief of a probable circumstance does not establish a wide interval between common law and common sense. It is believed in this respect to show their intimate union.

The argument goes to this, that the paper shall be received and acted upon as an affidavit, not because the oath appears to have been administered according to law, but because it is probable that it was so administered.

This point seems to have been decided by the constitution.

"The right of the people," says that instrument, "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the places to be searched and the persons or things to be seized."

The cause of seizure is not to be supported by a probable oath, or an oath that was probably taken, but by oath absolutely taken. This oath must be a legal oath; and if it must be a legal oath, it must legally appear to the court to be so. This provision is not made for a final trial; it is made for the very case now under consideration. In the cool and temperate moments of reflection, undisturbed by that whirlwind of passion with which in those party conflicts which most generally produce acts or accusations of treason, the human judgment is sometimes overthrown, the people of America have believed the power even of commitment to be capable of too much oppression in its execution, to be placed without restriction even in the hands of the national legislature. Shall a judge disregard those barriers which the nation has deemed it proper to erect?

The interest which the people have in the prosecution has been stated; but it is firmly believed, that the best and true interest of the people is to be found in a rigid adherence to those rules which preserve the fairness of criminal prosecutions in every stage.

If this was a case to be decided by principle alone, the court would certainly not receive this paper. But if the point is settled by decisions, they must be conformed to.

It has been said to be settled in the supreme court of the United States, by admitting the affidavit of Wilkinson, to which an exception was taken, because it did not appear that the magistrate had taken the oaths prescribed by law. It was said, that as by law he could not act until he had taken the oaths, and he was found acting, it must be presumed that this prerequisite was complied with; that is, that this acting as a magistrate under his commission, was evidence that he was authorized so to act.

It will not be denied that there is much

strength in the argument; but the cases do not appear to be precisely parallel.

The certificate that he is a magistrate, and that full faith is due to his acts, implies that he has qualified, if his qualification is necessary to his being a complete magistrate, whose acts are entitled to full faith and credit.

It is not usual for a particular certificate that a magistrate has qualified, to accompany his official acts.

There is no record of his qualification, and no particular testimonial of it could be obtained.

These observations do not apply to the objections which exsist.

But it is said that the certificate is the same with that in Wilkinson's affidavit.

If this objection had been taken, and overruled, it would have ended the question. But it was not taken, so far as is now recollected, and does not appear to have been noticed by the court. It is not recollected by the judge who sat on that occasion to have been noticed. A defect, if it be one, which was not observed, cannot be cured by being passed over in silence.

The case in Washington was a civil case, and turned upon the point; that no form of the commission was prescribed, and consequently that it was not necessary to appear on the face of it, that it was directed to magistrates.

That it was the duty of the clerk to direct it to magistrates, and he should not be presumed to have neglected his duty, in a case in which his performance of it, need not appear on the face of the instrument.

That the person intending to take this exception, ought to have taken it sooner, and not surprise the opposite party, when it was too late to correct it.

But the great difference is, that the privy examination was a mere ministerial act —the administering an oath is a judicial act.

The court is of opinion that the paper purporting to be an affidavit made by Dunbaugh, cannot be read, because it does not appear to be an oath.

Mr. Hay observed that it was uncertain how long this examination might continue, and A. Burr was still at liberty. He said he made a motion the first day, and he ought to have been held to bail, or in custody, until the court had decided. He expected Gen. Wilkinson immediately, but had apprehensions that Burr might in the mean time escape. He gave notice, that unless the examination was settled, and the court decided this day, he should move that he appear to-morrow to answer to the charge of treason.

After some desultory conversation, he proceeded, stating that merely to give notification of a motion. He considered A. Burr standing as if he had been formally brought by a warrant before the court, in the same situation that he had on a former examination, when he was bound to bail from day to day.

Mr. Wickham declared that there was no analogy between the two cases. At that time Col. Burr was not bound. But now he comes into court actually bound in large sums.

Mr. Martin observed that nothing in Wilkinson's affidavit went to charge Burr with treason.

Mr. Randolph complained of the novelty and extraordinary nature of the proceedings.

Mr. M. Roe was apprehensive that Burr would be induced to attempt an escape, unless this motion obtained.

Mr. Wirt declared that the present was a distinct original motion, that this was a charge of high treason.

Mr. Botts observed, that according to the principle now held by the prosecution, every edition of the volume of evidence might justify a new inquiry. The counsel for the prosecution seemed to draw a precedent from the fashion of old times, when they would try a witch. If she swam, she was condemned, of course, if she drowned, she was acquitted. That the simple assertion of the prosecutor was not sufficient to authorize the court to bind over Col. Burr. Besides, Col. Burr was already bound on his recognizance.

Tuesday, June 9th.

Debate on granting a subpœna duces tecum, for the President of the United States.

After some desultory observations respecting the probability of the speedy arrival of Gen. Wilkinson, Mr. Burr addressed the court, stating that in the President's communication to Congress, he speaks of a letter and other papers which he received from Mr. Wilkinson, under date of 21st of October. That it was material that the whole of this letter should be produced in court.

He declared it was material to show in what circumstances he was placed in the Missisippi territory: and to obtain certain orders of the army and navy respecting him. The instructions contained in the order to the navy, were to destroy his person and property in descending the Missisippi. He wished to authenticate this statement, and had applied to Mr. Robert Smith for that purpose, who seemed to admit the propriety of the application, but objected to his course. He informed him that if he would apply through the medium of counsel, there would be no difficul-

ty in obtaining the documents. He had thus applied, but unsuccessfully. Hence he felt it necessary to resort to the authority of this court, to issue a subpœna duces tecum. The attorney for the U. S. might, however, save time, by consenting to produce the letter of the 21st Oct. with the accompanying papers, and authentic orders of the navy and war departments.

Mr. Randolph observed that he had addressed a letter to Mr. S. informing him of Col. Burr's statement. That he had received a letter in reply, stating that the order alluded to was intended merely for the officer to whom it had been addressed, and was to be seen only by him. He added, that he had written in reply to Mr. S. that it had appeared in the Natchez Gazette; and that Mr. Van Ness, the friend of Col. Burr, had informed him of Mr. S.'s unconditional promise to furnish the order, if he was properly applied to.

After some further observations on either side respecting the purport of these orders and the use proposed to be made of them, chief justice inquired if the Natchez Gazette was in court, was answered in the negative, and Col. Burr observed that he had seen the same order in other papers, and that it was a matter of surprise that such an order should have found its way into a public print.

Mr. Wickham declared that as to Wilkinson's letter, he wished to see the original here, and surely it may be trusted in the hands of the attorney of the United States.

Mr. Hay. It seems then that copies of papers from the government of the U. S. will not be received. They are not to be trusted. After such an observation, sir, I retract every thing I had promised. Let gentlemen, sir, take their own course. After some warm desultory conversation, Mr. Wickham explained that the distinction he had drawn between the original and a copy, arose only from a wish to obtain the highest possible species of evidence, and that if Mr. W. was here, it might be necessary to confront him with his own letter.

Mr. Hay. That explanation removes the difficulty.

Some desultory conversation took place respecting the letter's being addressed to Mr. Jefferson in his private capacity. Mr. Hay thought, therefore, they had no right to demand it. If it was a public letter, it was deposited in the department of state. He had no objection to repeat his promise to apply for these papers, if the court thinks them material. He hoped no more time would be wasted in these preliminary stages.

Mr. Randolph had no reason to believe that there had been more delay on his side than on the other.

Mr. Botts declared that the delay was not with Burr, or his counsel, and that the clamour respecting the consumption of time, was indecorous and unnecessary in a case of such unexampled importance.

Chief justice was not prepared to give an opinion, and therefore must call for an argument.

Mr. Hay would repeat his promise to write for the papers, and had no doubt of their being produced.

Mr. Botts stated that 6 days would be lost in obtaining an answer to the application, and copying papers, and perhaps, after all, they might not be produced, and the loss of time and expense would be an object of magnitude.

Mr. Hay. Since gentlemen press the subject, we merely wish the discussion might be adjourned till to-morrow.

Court adjourned.

(To be continued.)

PARTICULARS

OF THE

LATE DISGRACEFUL OUTRAGE,

Extracted from the Norfolk Ledger, of June 24.

We are sorry to present our readers the details of the most unexempled outrage, in the perpetration of which the blood of our countrymen has been shed by the hand of violence, and the honour and independence of our nation insulted beyond the possibility of further forbearance.

At a very early hour yesterday morning a report reached this place, which produced a degree of agitation beyond any thing we ever witnessed or can attempt to describe. It was reported that on the preceding evening the Chesapeake frigate, which had gone to sea that morning, had been attacked by the British ship Leopard, captain Humphries, of 50 guns, and that the Chesapeake had struck her colours. Although the source from whence this information was derived, was not such as to derive the highest consideration, yet it was stated in that way, and attended with such circumstances, which left but little hope that it was not true.

Accordingly every vessel and boat from the Capes was boarded with great anxiety, and which was not relieved until about 2 o'clock, when pointed information was received that the Chesapeake was returning to Hampton Roads, without showing any colours. About four o'clock all doubt was relieved, by a spectacle which was calculated, and did not fail to rouse the indignation of every American present, and we trust it will *never* subside until ample satisfaction has been made—eleven of our wounded fellow-citizens arrived in a boat dispatched from the Chesapeake, and now we learned the following particulars, which we believe are correct.

The Chesapeake frigate, Captain Gordon, under Commodore James Barron, got under way on Monday morning, and proceeded to sea, passing the Capes about 12 o'clock.—At 9 o'clock, the Leopard by signal from the Commodore's ship had got under way and stood out to sea.—About 3 o'clock the Chesapeake and Leopard approached, when the customary signal of firing a gun to leeward, the signal for friends, was made from both ships. Being about three leagues from the land, the ships came within hail, when the commander of the Leopard hailed, and hoped Commodore Barron was well, and informed that he had dispatches for the Commodore.—The ships hove to, and a boat came on board the Chesapeake, with a letter from captain Humpries. In this letter was a copy of one from Admiral Berkely, at Halifax, to all the British commanders on this station, in which they were ordered to demand from the commander of the Chesapeake, four British seamen named in the letter, and, that if they were not delivered by fair means, to use force. Captain Humphreys stated in his letter, that as Commodore Barron would perceive that his orders were peremptory, he hoped that he would not oblige him to execute them by force. Com. Barron returned an answer to the letter, in which he stated that the orders of his government forbid him to permit his vessel to be searched, or to deliver a man from her. The boat from the Leopard had no sooner returned on board, than a gun was fired a-head and a-stern of the Chesapeake, and instant followed by a broadside from the Leopard, accompanied by swivels and small arms. Six other broadsides followed, the two ships then within pistol-shot. On board the Chesapeake all was astonishment, the ship was unprepared for action, no man at his quarters, and some of the officers at dinner. In this situation, Commodore Barron hailed the Leopard repeatedly without effect; he then ordered the colours to be struck; as this was doing, a gun from the Chesapeake was fired, upon which the Leopard fired another broadside. The colours being now down, an officer was dispatched to the Chesapeake, who, on coming on board, expressed some regret on behalf of his commander for what had happened. He was received with great indignation by the American officers, who tendered their swords, which he refused, saying that he wanted the four men, and nothing more, and demanded the muster roll, which was produced by the Purser, and then was exhibited the degrading spectacle of nearly four hundred Americans mustered on the deck of an Ameriean man-of-war, by order of a British lietenant, and four of the crew taken away. The lieutenant said he was desired to make Commodore Barron an offer of any services in the power of his commander. It would be needless to say in what manner such an offer was received; it was considered as an aggravation of the outrage which had been perpetrated. The British officer refusing to consider the Chesapeake as a prize, departed, informing Commodore Barron that he was at liberty to proceed whither he pleased. The Commodore returned to Hampton Roads, as before stated. We are sorry to add to this account, that three of the crew were killed, and sixteen wounded, some of them dangerously. Commodore Barron was slightly wounded in the leg, and one Midshipman. The ship is greatly injured in her hull, masts, and rigging, and must be repaired before she can go

to sea. Such are the details of this affair, which we believe are substantially correct, being mostly furnished by a gentleman who was on board the Chesapeake last evening.

List of the Killed and Wounded on board the Chesapeake.

KILLED.

Joseph Arnold, City of Washington,
John Laurence, Pennsylvania.
John Sharkely, Phtladelphia.

WOUNDED.

Mr. Brook, Midshipman.
Robert M'Donald, Washington City.
Thomas Soort, Virginia.
George Percival Philadelphia.
Francis Coenhoven, New-York.
James Eppes, Petersburg, Virgina.
Cotton Brown, Candia, N. Hampshire.
Peter Simmons, Prussia.
William Hendrick, New-York.
Peter Ellison, Denmark.
John Hayden, Baltimore.
John Parker, New-York.
William Moody, Delaware.

It is impossible that on such an occasion, there can be but one sentiment in the heart of every American. The independence of our country has been attacked, and in defending it our fellow citizens have been killed.—Submission to the demand made on Commodore Barron could not have been made, without relinquishing our right as an independent nation. Every national ship is considered as a part of the nation's territory; as well might the government of Great Britain instruct her officers to land in our country and assume the right of punishing those who have offended her laws, as to enter our ships of war for the same purpose. This is not the act of a rash imprudent commander, but acting in execution of the deliberate orders of his superior officers, if not from the highest authority of the British government, and we shall state our reasons for so thinking.

In the month of March, the Halifax Sloop of War, commanded by Lord Townsend, was lying in Hampton Roads, and one of her boats with four men and a petty officer was sent on some duty. Being out of the reach of the guns of the Halifax, or being unobserved, the men rose upon the officer, and once threatened to throw him overboard; this however they did not do, but pulled for the shore, which they reached and proceeded to this place, where they entered with an officer then engaged in the enlistment of men for the Chesapeake. A formal demand was made to have them delivered up. The civil authority refused to interfere, and the officer who had enlisted them did not think himself authorized to deliver them without orders from his superiors. The case was represented, we believe, at Washington. The men were not delivered up, and were believed to be on board the Chesapeake. We are confident that a representation of the case was made to the British government, whose orders we apprehend, were to take the men wherever they were to be found. Our readers will be informed that the Leopard arrived here only a few days since, and brought the orders of the admiral at Halifax, to take the men at all events, and under any circumstances. It may be objected that there has not been time to hear from England since the circumstance respecting the Halifax occurred, which we think was about the 9th or 10th of March, but we know that answers to letters written to London, as late as the 20th of March, have been received here. However this may be, the captain of the Leopard has acted under the orders of his superiors, and and as such, the act claims the serious attention and resentment of the people and government of this country. It is no justification to say, that the men ought to have been surrendered in the first instance. We shall not stop to examine that subject now, but whenever matters of dispute between nations is settled by force, then it is war; unless from fear, or something worse, one of the nations is disposed to submit, which we trust and believe is not the case with the United States. It is the established usage for nations, who are not determined upon hostilities, to seek redress by negociation, and certainly America has pursued that course

with Britain on many occasions. If this act then is to be ascribed to the British government, there is an end of negociation on the subject, and war must be the result. Greatly as we always deprecated war with that country, conscious as we are, that our country will experience infinite distress, we look upon it as degrading beneath contempt, if we are to submit to such insult—No; we trust there will be but one heart and one hand in supporting the just rights, and the honour of our country.—If the act has not proceeded from the government of England, we persuade ourselves that our government will not want the unanimous support of its citizens, in pursuing measures for the obtention of ample satisfaction.

We cannot close these remarks, without noticing the manly and dignified conduct of the citizens of this place, under this trying occasion. Exhibiting that cool but firm countenance, which is the true indication of determined courage; no act of violence was committed, or intemperate expression used towards the British subjects, who happen to be here at this time; and it would be an act of injustice to the latter, if we did not add, that from every thing we could hear and see, they were penetrated with the deepest concern upon the occasion.

Thus ends Mr. Jefferson's gun-boat and proclamation system. Thus ends the illusory, the mad policy, which has led us to depend on the friendship of nations, and what *we* call our own justice, for security against the invasion of our rights.

We hope that the American people, as they are now feeling the sad consequences of the pusillanimous conduct of administration, will awake from their slumber, and withdraw their confidence from the men who have proved themselves so unworthy of it. The men who have destroyed our means of defence, who have answered with scorn and contumely every petition for fortifying our sea-ports, and have reduced our navy from 36 armed ships to a mere shadow, are virtually guilty of the plunder, devastation, and murders which have ensued. They who refuse protection to their fellow-citizens, when it is both their duty and within their power to afford protection, betray the dearest interests of their country, and although they may not be legally responsible, may be numbered among the Arnolds and the Blounts who have disgraced the union, and proved a scandal to humanity.

What are now our means of offence or defence? Look at our military and naval establishments. Look at our land forces. Where are our garrisons, arsenals, forts, fortifications, and disciplined troops?

We may take New-York navy-yard for a sample, indicative of the flourishing situation of our navy. A few crazy dismantled gun-boats, the keel of a seventy-four, laid by the Federal administration; timber to a large amount rotting, a few rusty cannon exposed to the weather, speak the pitiful economy of a penny-saving administration.

But we have philosophy and Mr. Jefferson, civility of manners and the gentle Jim Cheetham; pure patriotism and Paddy Duane, all, all, arrayed in our defence against the tyrants of the ocean!! And if Americans continue to do as they have hitherto done, rely upon such principles and such leaders, we must suffer with the best grace possible; and if our towns are ravaged and burned, our citizens plundered, the survivors will console themselves by railing against British cruelty and oppression.

But we can take Canada and Nova

Scotia. Not, however, under the present government, and under the present system. A few half armed undisciplined militia-men will not effect those objects. And if the good democrats impose taxes and raise an army, down goes their popularity, and they tumble after of course. Besides, the British can do us most harm; for they can burn our sea-ports, plunder our coasts, and sweep our commerce from the ocean. We can however turn savages, and enjoy liberty in a hollow tree, equality in the cave of the mountain, and all this will accord with the newest cut of Godwinico-Jeffersonico-philosophy.

But we can confiscate British property. True: and they can retaliate on American property. Unless we are much misinformed, the balance would not be greatly in our favour. Besides, this step would be a stroke at the vitals of our credit as a commercial nation. We should be reputed a nation of pirates, and treated accordingly. That credit which is the soul of our commerce, would be denied us. Our ships must rot in the docks, our seamen must starve, or enter into foreign service; the produce of our farmers must remain on their hands, for the want of a market; there could be no incentive to industry; and the distress which would be felt by all orders in society, would be infinite.

All this, however, is what we are exposed to by an infamous gun-boat-proclamation-system. With a naval force, although it were very small compared with that of Great-Britain, we could, in consequence of the felicity of our situation, trim the balance of power on the ocean. We could harass the English West-India trade, and in the tremendous contest of 'doing harm,' we should not be behind any European power. But if we pursue the Jeffersonian system of policy, we have nothing to do but to lie down quietly, and be trodden upon.

Our situation, we must confess, is much more unfavourable on many accounts, than it was in our revolutionary war. At that time we had no government, but the people were spirited, and a government was easily formed. Now we have a government which is a mill-stone about our necks. Worse than a dead weight, they will neither arm nor fortify, nor can the people arm and fortify, because they would be interfering with the province of their rulers. We are tied hand and foot by our good men in power. Our men at helm will neither act efficiently, nor permit the efficient exertions of others. "*We the people*," or "*we the mob*," may meet in the open air as often as our noble sovereign selves may think proper, and may pass flaming and patriotic resolutions. But to what purpose is all this mighty patriotism? Where is our money, the sinew of war? Depending on our commerce, which the British will destroy. Where are our arms and our ammunition, our discipline, and our system? One has a pitch fork, another a crowbar, a third a yard stick, with now and then to be seen a gun and bayonet, but as to system, we have nothing more to depend on than the friendship of nations.

These reflections are from the pen of a true American, who has as little partiality for Great-Britain as for France, and not one cent's worth of partiality for either.

But what are we to do? and what can be done? These are questions I cannot answer. I fear that we must suffer—that we must be hit over the head before we shall open our eyes. No taxes can be laid, for that would be anti-republican. No navy, for that is the quintessence of despotism.

Well, go on! democracy and Jefferson, the rights of man and Tom Paine, gun boats, proclamations, Cheetham's civility. J——'s morality and Tom Paine's religion will doubtless protect us!

We have every reason to believe that this act of the British, although doubtless unjustifiable, was not unauthorized. It was the act of the government, who have resolved to pursue a new system, as respects their foreign relations. It is nothing more than what we anticipated from the change in the British administration.

We may form patriotic resolutions, which may be very well in their place, but they will not supply the place of an armament.

We hope that this alarm will awake the spirit of the American people, and convince them that we must be powerful, if we wish to be respected, and that placing reliance on the friendship of nations, is leaning on a broken reed.

We would not by the preceding remarks be understood to mean any thing derogatory to the spirit exhibited by our countrymen at this alarming crisis. On the contrary, we are happy to perceive that they possess a just sense of the indignity offered them—that they feel their wrongs, and are prepared to assert their rights. But it is not from temporary ebullitions of patriotism, that we are to expect national respectability. We must go to the root of the evil. By what means have we become so degraded and so despicable, that a single sloop of war may batter our towns about our ears? Ask our men at helm—the men who destroyed the Federal navy—The men who refuse to fortify, but advise us to fly to the mountains, in case of hostility. These are the men who have cut the sinews of our strength; have blasted while yet in blossom our national glory.

NEW-YORK MEETING.

At a general meeting of the Citizens of New York, held in the Park on Thursday, July 2d, 1807, the Hon. De Witt Clinton having been unanimously called to the Chair, and Gen. Morton unanimously appointed Secretary, the following Resolutions were adopted, introduced by the following recital.

Having received with the most lively indignation, authentic information, that on the 22d ultimo an attack, unwarranted by the known usages of nations, and in violation of our national rights, was made, off the Capes of Virginia, on the United States frigate Chesapeake, Commodore Barron, by his Britannic Majesty's armed ship the Leopard, Captain Humphries, the Citizens of New-York, assembled in general meeting, deem it to be their duty to express their opinions on this fresh outrage offered to their national sovereignty by the navy of Great-Britain: therefore,

Resolved, That it is and has been the policy of our government, and the wish, because it is the interest of our citizens, to be at peace with all the world.

Resolved, That although we cherish peace with the greatest sincerity, yet that we hold ourselves ready, at the call of our government, to resist all infringements of our national rights, and violations of our national honour.

Resolved, That we consider the dastardly and unprovoked attack made on the United States armed ship, the Chesapeake, by his Britannic majesty's ship Leopard, to be a violation of our national rights, as atrocious as it is unprecedented.

Resolved, That we are determined to maintain the rights and dignity of our country with our lives and fortunes, and that we will support our government in whatever measures it may deem necessary to adopt in the present crisis of affairs.

Resolved, That whatever differences of opinion may exist among us on our merely local concerns, yet that we love our country, and will cordially unite in resisting the attempts of any nation to invade our rights, or tarnish our national honour.

Resolved, That the offending ships at Hampton Roads, have wantonly violated the laws of, and forfeited their title to national hospitality.

Resolved, That we highly approve of the spirited and patriotic conduct of our fellow-citizens at Norfolk, Portsmouth, and Hampton.

Resolved, That we deeply lament the death of those of our fellow-citizens who fell, and sincerely sympathize with those who were wounded on board the Chesapeake.

DE WITT CLINTON, *Chairman.*
JACOB MORTON, *Secretary.*

A Norfolk paper of June 27, states, that the pilots were discharged from the British squadron—that the commanders of the British vessels had threatened to man their launches, and get supplies by force—that the inhabitants were preparing ball and cartridges, in order to repel them—that a general meeting was to be held on that day for the purpose of taking into consideration what measures were necessary to be adopted for the public defence—and that the British consul had requested to know in what manner he should communicate with the fleet. He was allowed boats, after pledging his honour that no supplies should be carried in them.

Washington, June 27.

We received by the last night's mail a letter from Richmond, dated Wednesday, 7 P. M the hour on which the mail closes, which states—

That the Grand Jury had that day found four true bills; two against Aaron Burr for treason and misdemeanor; and two of the same tenor against Blennerhasset.

A long and animated discussion ensued on a motion to commit Mr. Burr to the custody of the marshal, which was decided (for that night) in the affirmative. He was consequently committed to jail for that night—The argument remained open, and, it was expected, would be resumed next day.

The account which we this day copy from the Norfolk Ledger, of the atrocious outrage commited on the Chesapeake, varies in some important particulars from the statements which we have before seen.—Though the question of the citizenship of the men demanded by the British officer cannot in any way affect the main point, inasmuch as the fact of their being British subjects would not authorize a British officer to search a national ship of the United States for them, still it would supply a ground of provocation which would render it expedient to our government to proceed with more circumspection in their mode of obtaining redress. It seems that our information was not correct as to the fact that Mr. Erskine was satisfied of the citizenship of the men, and we are at this moment unable to say with certainty whether they are native Americans or not. [*U. S. Gaz.*

We promised last week the last words of the Morning Chronicle, but matter of more general concern, has occupied our columns. Our first spare page shall be dedicated to its dying speech.

A Poem, entitled, "Ulm and Trafalgar," has passed through two editions in London, and has been attributed to George Canning, Esq. M. P. Many of the lines, however, are supposed to have been written by the late prime minister, William Pitt. The merit of Mr. Canning, as a poet, is put beyond the reach of our eulogy, by his communications for the celebrated Anti-jacobin newspaper. Many of the finest poems in that work, and among others the 'Loves of the Triangles,' which sneers most successfully at Darwin's 'Loves of the Plants,' are said to be from his pen.

LAMENTED Hero! when to Britain's shore
Exulting fame those awful tidings bore,
Joy's bursting shout in whelming grief was drown'd,
AND VICTORY'S SELF UNWILLING AUDIENCE FOUND;

On every brow the cloud of sadness hung.
The sounds of triumph died on every tongue.

Not joy thus doubtful, sadness thus sincere,
Shall grace, erewhile, the tyrant's—conqueror's bier;
Whether, with undiscriminating sweep,
The scythe of war, amid the mangled heap,
Shall lay him low; or lone corroding care,
Without one heart to pity or to share,
And cheerless toils of solitary sway,
Shall waste his withering frame with slow decay;
Come when it will, when heav'n's all righteous hand,
To save, or to avenge each injur'd land,
Nations shall kneel to bless the welcome doom,
And France, unfetter'd, trample on his tomb.

But thee, lov'd chief! what genuine griefs bemoan!
Fleets, cities, camps; the cottage and the throne!
Round thy throng'd hearse those mingling sorrows flow,
And seek faint solace in a pomp of woe!

Yet not the vows thy weeping country pays,
Not that high meed, thy mourning sovereign's praise;
Not that the great, the beauteous, and the brave,
Bend, in mute reverence, o'er thy closing grave;
That with such grief as bathes a kindred bier,
Collective nations mourn a death so dear:
Not these alone shall soothe thy sainted shade,
And consecrate the spot where thou art laid!
Not these alone. But, bursting through the gloom,
With radiant glory from thy trophied tomb,
The sacred splendor of thy deathless name
Shall grace and guard thy country's martial fame;
Far seen shall blaze the unextinguish'd ray,
A mighty beacon, lighting glory's way;
With living lustre this proud land adorn,
And shine and save through ages yet unborn.

From an English Publication.

ON THE PARATOUT*.

Blow as ye list, ye winds fantastic, blow!
Descend, ye rains, and fall thou, feather'd snow!
Beauty beneath this canopy defies
The veriest malice of the inclement skies,
As plants in green-house snug, each lovely form
Smiles at the tempest, and derides the storm:
From east to west, let sleety gusts assail,
Its hope still varying, meets the varying gale.

The dog-star rages: streams of potent heat
Oppress the eye, and round the temples beat.
Fear not, ye fair! your breasts of living snow,
And cheeks that like the dew-wash'd rosebud glow,
Beneath this silken covert, safe remain,
And winter's storm, and summer's scorch in vain.

But who its varied excellence can speak?
Chang'd to a fan, it cools the glowing cheek;
In airy chariot now the fair is driven,
Expos'd, yet fearless of the winds of heaven;
For see the courteous Paratout has spread
Its grateful umbrage o'er th'unsheltered head.

When fashion's crowds in gay disorder meet,
When belles meet belles, and jostle in the street;
Instant, obsequious to the lily hand,
The silken folds contract and courtesy at command.

And when the circle of the fair retire
To the calm comforts of the social fire;
Collapsing to a screen, the flexile toy
Still guards the lustre of the rolling eye:
An ever useful, ever graceful friend,
Health to preserve, and beauty to defend.

J. MORFIT

* An invention, which, by a simple spring, may be converted from an elegant parasol to a fan, a fire screen, or shade for reading—It may likewise be used as a parapluie, and paravent.

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